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In the Supreme Court of the United States

OCTOBER TERM, 1986

GARY R. FRINK and SHERRY R. FRINK,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

JAMES M. GEORGE and
MARGARET C. GEORGE, et al.,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON PETITIONS FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURTS OF APPEALS
FOR THE FOURTH AND FIFTH CIRCUITS

PETITIONERS' REPLY MEMORANDUM

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The Commissioner, recognizing that the Circuit conflicts in Bollinger, Frink, and George[1] can be expected to lead to disparate treatment of similarly situated taxpayers in a question of significant importance in tax and financial planning, did not oppose the grant of certiorari herein. (Res. Brief page 9). Concurrently with the filing of respondent's brief, the Commissioner petitioned this Court for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit (No. 86-1672) in Bollinger.

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1. Bollinger v. Commissioner, 48 T.C.M. (CCH) 1443 (1984), aff'd 807 F.2d 65 (6th Cir. 1986); Frink v. Commissioner, 49 T.C.M. (CCH) 386 (1984), rev'd 798 F.2d 106 (4th Cir. 1986); and George v. Commissioner, Cited in U. S. Tax Court as Frink v. Commissioner, 49 T.C.M. (CCH) 386 (1984), rev'd 803 F.2d 144 (5th Cir. 1986).

BOLLINGER SHOULD BE CONSOLIDATED WITH FRINK AND GEORGE, AND NOT HELD

In its reasons for granting the petition, the Commissioner suggests:

> In the event the Court grants certiorari in Frink and George, it would be appropriate to hold this case [Bollinger] pending the disposition of those cases. (Pet. Brief page 5).

Upon the granting of certiorari, petitioners strongly oppose this suggestion, and strenuously urge that Bollinger be consolidated with Frink and George for purposes of briefing and oral argument. These three cases are the very essence of the conflict giving rise to the grant of certiorari. A wiser decision of this Court will result from its direct consideration of both sides of the conflict. While factually indistinguishable, the idiosyncrasies and nuances of these cases should be considered by this Court together.

THE ISSUE IS IMPORTANT

In furtherance of the Commissioner's discussion of the far-reaching uncertainty of the Frink / Bollinger conflict (Res. Brief page 14), petitioner has recently learned of a similar nominee issue pending before the administrative appeals division of a state department of revenue. The matter is presently being held by the state taxing authorities pending the outcome of these cases. This is further evidence that the even-handed administration of the tax laws, as well as predictability in tax and financial planning, will be enhanced at the state as well as the federal levels by resolution of this conflict.

Respectfully submitted,

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